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No. [redacted]

CHARLES L. COSTELLO,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

[redacted]

BRIEF AND APPENDIX OF THE STATE OF NEW JERSEY, IN OPPOSITION TO THE PETITION OF CHARLES COSTELLO FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 767

CHARLES I. COSTELLO,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

BRIEF OF THE STATE OF NEW JERSEY IN OPPOSITION TO THE PETITION OF CHARLES I. COSTELLO FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

Respondent, State of New Jersey, prays that a Writ of Certiorari be denied petitioner, Charles I. Costello, upon the various orders of the Superior Court of the State of New Jersey denying petitioner's Motion to Suppress certain evidence seized under warrant to search and granting the State's Motion for Reciprocal Discovery and the Orders of the Superior Court, Appellate Division and the Supreme Court of New Jersey denying the petitioner's motions for appellate review. No substantial fed-

eral questions, not previously foreclosed from review by recent decisions of this Court are raised by these Orders; moreover, such orders are interlocutory in character, and in the case of the Order for Reciprocal Discovery, may be properly objected to any time during the course of the proceedings. Petitioner has failed to do this and has therefore failed to exhaust his remedies under State law. For such reasons, in addition to others stated herein, the requested petition should not issue.

Counter-Statement of Jurisdiction

Petitioner seeks to invoke the jurisdiction of the Court under 28 U.S.C. §1257 (3) which sets forth the grounds upon which petitions for certiorari from "final judgments or decrees rendered by the highest court of State" may be entertained. The Court has developed doctrines and requirements, in addition to the basic jurisdictional requirements set forth in the statute, to determine whether certiorari should issue. Application of such doctrines and jurisdictional standards dictates denial of the instant petition.

As more fully explicated herein, the trial court's disposition of questions generated by petitioner's motion to dismiss was mandated by the doctrine laid down by the Court in *United States* v. *Ventresca*, 380 U. S. 102, 13 L. Ed. 2d 684, 85 S. Ct. 741 (1965). A review of the facts underlying this petition, as set forth in respondent's Counter-Statement of Facts and Appendix, and examined in respondent's Points II and III, herein, in the light of *Spinelli* v. *United States*, 393 U. S. 410, 21 L. Ed. 2d 637 (1968) and *Aguilar* v. *Texas*, 378 U. S. 108, 12 L. Ed. 2d 723 (1964) only serves to fortify the conclusion that no substantial federal questions, not foreclosed by prior decision, are presented to the Court in the instant petition.

The question of whether the alleged mis-designation in the warrant for search of the premises from which evidence was seized was a fatal defect rested with the trier of fact. Petitioner failed to meet his burden of proof of establishing that the officers charged with execution of the warrant, could not, with reasonable effort, ascertain and identify the place intended to be searched. *Steele v. United States*, 267 U. S. 498, 69 L. Ed. 757 (1924).

Petitioner lacks standing to challenge the constitutionality of New Jersey Rule of Court 3:13-3 (d). He has not indicated how his compliance with an order issued thereunder has prejudiced him or threatens to prejudice him by compelling self-incrimination. See *Poe v. Ullman*, 367 U. S. 497, 6 L. Ed. 2d 989 (1961).

The inchoate interest which the petitioner seeks to have protected cannot be characterized as compelling self-incrimination as is clear from *Williams v. Florida*, 399 U. S. 78, 26 L. Ed. 2d 446 (1970).

The Order for Reciprocal Discovery of the trial court cannot be considered "final" under the standards of 28 U.S.C. §1257. Apart from this, petitioner has failed to exhaust the remedy incorporated in R. 3:13-3 (g) (1) of a protective order available at "any time" to protect legal privileges, presumably because he lacks ground to claim a threat to the purported privilege. When such an order is available at any time, it is clear under *Williams v. Florida*, *supra*, that the granting of discovery can never be a final order.

The constitutionality of the New Jersey Reciprocal discovery rule has never been determined by the Supreme Court of New Jersey. This Court in *Williams v. Florida*, *supra*, indicated its approval of at least some form of pre-trial criminal discovery. The highest courts of every

state jurisdiction which have considered the question all have found that some form of pre-trial discovery by the State is constitutional. In addition, New Jersey's rule incorporates special safeguards for legally recognized privileges. Certainly the courts of New Jersey should have a chance to construe this rule before the Court takes jurisdiction on this question. *Cf. Fornaris* v. *Ridge Tool*, 400 U. S. ——, ——; *Reed* v. *Rozanich*, 397 U. S. 82, 25 L. Ed. 2d 68 (1970); *The City of Meridian* v. *Southern Bell Tel. & Co.*, 358 U. S. 639, 3 L. Ed. 2d 562 (1959).

If the Court still considers the constitutionality of certain forms of pre-trial discovery by the prosecution a viable question, respondent respectfully submits that: (1) The constitutional problems, if any, which may attend application of some forms of pre-trial discovery procedures have not appeared in either actual, or incipient form in the instant proceeding, and (2) The New Jersey procedure, because of its prophylatic provisions is not an appropriate vehicle for an exposition of the constitutionality of these questions.

For the foregoing reasons, it is respectfully submitted that this Court must find it lacks jurisdiction to entertain the matter of the instant petition for certiorari, or in the alternative, decline to assume jurisdiction.

Counter-Statement of Questions Presented

1. Is not the rule of court allowing the state reciprocal discovery of the identity of witnesses defendant intends to call at trial, as well s their statements, if any, and any scientific tests or experiments related to evidence seized pursuant to a valid search warrant, which is subject at any time in the proceeding to defendant's right to a protective order in the form appropriate to

protect "confidential relationships and privileges recognized by law.", constitutional on its face?

2. Is not a warrant to search constitutional that is issued on the basis of an affidavit containing information recited to be upon personal knowledge of the affiant, an experienced State Police Investigator, sufficient for an experienced Judge to make an independent determination, based solely on that information, of probable cause, irrespective of any incidental references to information received from confidential informants?

3. Was not the trial court correct in upholding the search of entire premises of the J. C. Vending Machine Corporation of No. 947 Southard, Trenton, including one of the "buildings comprising J. C. Vending Inc." which bore no street number but shared a back party wall with a separate, unattached building unit bearing the address No. 951 Southard Street which was occupied by another company and did not form part of the premises of J. C. Vending Machines Corporation?

Counter-Statement of Facts

On April 24, 1959, a confidential informant, who had proven in the past to be reliable, advised the New Jersey State Police that a unified lottery operation was being conducted in the City of Trenton, at various locations in the City in violation of N.J.S. 2A:121-3 in the following manner: Horace L. Shivers, operating a 1960 Rambler, or a 1959 Cadillac convertible would pick up lottery bets at various places in the City, and deliver such lottery bets at various places in the City, and deliver such lottery bets in this form to either Philip Ventigli, at his house on Princeton Avenue, Trenton, or the premises of the J. C. Vending Corporation of No. 947 Southard Avenue, Trenton.

Independent State Police checks revealed that Horace Lee Shivers, black male, age 31, had been arrested in 1965 for engaging as a messenger for an illegal lottery and possessing illegal lottery slips, and that Philip Anthony Ventigli had been arrested in 1954 for possession of lottery paraphernalia.

Over the course of the next two months, investigator Andrew Andaloro and Detectives DeMasi and Decker of the New Jersey State Police conducted intensive surveillance of the locales and persons referred to by the confidential informant. The affidavit of investigator Andaloro, which appears as respondent's Appendix (hereinafter "Ra ") recites in copious detail, the nature and extent of the surveillance, as well as the personal observations the officers made in the course of their investigation.

In addition to the subjects Shivers and Ventigli, mentioned by the informant, other persons including the defendant Charles H. Clark, an employee of the J. C. Vending Corporation who had an arrest record for grand larceny, and John O. Mapp, who had a record of numerous arrests for lottery violations, were regularly observed about the subject J. C. Vending Machine premises, engaging in the collection and delivery of various envelopes and paper bags of the type commonly employed in illegal "numbers games".

The pattern observed by the detectives was characterized by a regularity of time, participants, and routine, and had been accurately reflected by their informant. The Court's attention is directed to Officer Andaloro's affidavit which is noteworthy as an example of experienced policemen refusing to rest upon an informer's tip or their own suspicions, but rather, painstakingly document-

ing the indications of suspicious activities and drawing their own conclusions, based upon far more than the information cited in the "tip".

On June 30, 1969, Investigator Andaloro applied for a warrant, solely on the basis of recitals made in the affidavit, to Judge Frank J. Kingfield of the Superior Court.

Andaloro stated therein, that he had been a police officer for five years; he had conducted numerous gambling investigations and had determined that illegal lottery operations were typically characterized by the same pattern he had just observed: the recording of bets received by the "writers" on slips of paper which are retained by the writer until they are turned over to a collection man or "runner" who, after gathering slips from the writers, transports all the slips to the "drop" or "bank". He stated that paper bags and envelopes are the containers commonly used in the transportation of these slips. Furthermore, the unusual hours during which the activities were observed he found to be indicative of the delivery of lottery slips to a "drop" or "bank".

Basing his judgment solely upon the Andaloro affidavit and his own considerable knowledge of illegal lottery operations, Judge Kingfield determined there was probable cause to believe an illegal lottery was in operation (Pa16-17) and issued a warrant for *(inter alia)*:

> ". . . the premises of J.C. Vending Inc., 947 Southard Street, City of Trenton. . . . including the buildings comprising J.C. Vending Inc., which are generally surrounded by the chain link fence or which are accessible from within the fenced area of J.C. Vending property . . . (Pa18)

The J.C. Vending Inc. premises were, as indicated in the warrant, comprised of more than one building. Only

the main building was numbered 947 Southard Street, the company's business address. Hence the initial reference in the Andaloro affidavit to "J.C. Vending Machines, Inc. of 947 Southard Street" (Rat) was more accurate than the description in the warrant. Number 951 was next door to No. 947 and enclosed within the same fence. At the back of No. 951 was a separate, but contiguous building unit of different dimensions, joined to it by a party wall and fronting on the J.C. Vending yard. The back building unit bearing no street address, attached to the front building bearing the address No. 951 Southard, was used, ostensibly for storage, by J.C. Vending.

The front portion of No. 951 was occupied by the Trans World Wig Company. In order to enter the back building from the front of No. 951, it was necessary to go out a side door into the J.C. Vending yard and enter one of the two doors opening onto the yard. Thus the wig company premises were segregated from the back building and the rest of the J.C. Vending premises. The gates to the complex were locked after 4:30 P.M. At night the only way of entering the address less building without breaking into and out of the wig company premises was to enter from the yard adjoining the J.C. Vending premises at No. 947 to which it pertained.

On July 1, 1969, during a raid by state and local police at the J.C. Vending Machine Inc. premises, certain evidence was seized from one of the two contiguous units which bore the No. 951 Southard Street address on the street side. There was no evidence, or allegation that the premises of the wig company, occupying the front building, was entered or searched, or that the garbage disposal, and the intercom system which connected with the main building—No. 947 were not taken from the rear building unit.

The J.C. Vending Inc. premises were owned and occupied by the petitioner and following the raid he was indicted for conspiracy to carry on, and knowingly carrying on a lottery in violation of N.J.S. 2A:121-3 and N.J.S. 2A:112-3.

At a hearing on March 6, 1970, on petitioner's challenge to the description of the premises in the warrant and the adequacy of the affidavit, petitioner and his wife testified regarding the physical positions of the building upon the J.C. Vending Machines Inc. premises, as set forth thereon. No evidence was adduced by either party as to the sufficiency of the warrant. After hearing the testimony and the argument offered on behalf of petitioner, the trial denied petitioner's motion to suppress upon finding that petitioner had failed to produce any evidence that the seized items did not come exclusively from the back unit occupied by J.C. Vending.

At this time, the court granted the State's motion for a reciprocal order under N. J. Rules 3:13-3 (d) to have defendant make available any scientific tests or experiments made upon, or related to the intercom system and the garbage disposal unit, and a list of witnesses petitioner intended to use at trial. Petitioner had already obtained similar discovery from the State. Counsel for petitioner sought denial of such order, at least insofar as it sought a list of witnesses, on the grounds that this violated the privilege against self-incrimination. However, upon the granting of the order, petitioner failed to request a protective order pursuant to Rule 3:13-3 (g) or indicate what in particular would tend to incriminate him. The State acknowledged that it had no hope of obtaining new evidence. It simply wished to impose the burden of continuing disclosure on the petitioner in the event he made new tests on any apparatus (R. 14).

REASONS URGED FOR DENYING THE WRIT

POINT I

New Jersey's pre-trial criminal discovery may not be assailed by a defendant on the ground it violates the right against self-incrimination or to remain silent.

A. The recent decision in *Williams* v. *Florida* is controlling on the question raised in Point Three of the petition regarding the constitutionality of the pre-trial discovery procedure.

Petitioner acknowledged during the course of the hearing on the State's motion for reciprocal discovery (R. 18-19) that there can be no claim of self-incrimination where the State seeks merely to obtain the disclosure of physical things other than evidence of a testimonial or communicative nature obtained from or emanating from the defendant himself. *Schmerber* v. *California*, 384 U. S. 757, 761, 16 L. Ed. 2d 908 (1966). Essentially, the focus of petitioner's objection to the reciprocal discovery by the State under New Jersey Rule 3:13-3 (d) is upon to subparagraph (d) (2) of that provision:

> "(d) *Discovery by the State.* If the court grants discovery or inspection to a defendant
>
> (1) . . .
>
> (2) pursuant to R. 3:3-13 (e), it may condition its order by requiring the defendant to disclose to the prosecuting attorney the names and addresses of those persons known to the defendant, whom he intends to use as witnesses at trial and their written statements, if any."

There is no corresponding provision in Federal Rule 16 from which the New Jersey Rule is derived, although the

Federal Rule does provide for reciprocal discovery of physical evidence.

The order issued was patterned on the form of the rule. Petitioner opposed the granting of the discovery order but failed to move pursuant to R. 3:13-3 (g) (1) for an order to protect himself against the never specified self-incrimination he alleged would flow from his compliance with the order.

Williams v. *Florida*, 399 U. S. 78, 26 L. Ed. 446, (1970) appears to be controlling as to the questions actually raised by the petitioner's submission to reciprocal pre-trial discovery. In *Williams*, the petitioner-defendant was denied, upon his pre-trial motion, a protective order to excuse him from the Florida rule requiring a defendant upon written demand of the prosecuting attorney to give notice in advance of trial if the defendant intends to claim an alibi, and to furnish the prosecuting attorney with information as to the place he claims to have been and the names and addresses of the alibi witnesses he intends to use. He complied with the order and was convicted. Petitioner contended in *Williams* that the rule compelled him, as a defendant in a criminal case, to be a witness against himself in violation of the Fifth Amendment. The Court noted that the notice-of-alibi rule was simply a limited form of pre-trial discovery by the State and quickly disposed of any suggestion that the "discovery" permitted the State deprived petitioner of "due process" or a "fair trial". 399 U. S. at ——, 26 L. Ed. 2d at 449.

More critically the Court rejected the petitioners' contention that he was "compelled to be a witness against himself" by being required to identify the witness he intended to call in his defense, and by enabling the State to obtain

information useful in convicting him, through deposition of the witness. He also unsuccessfully contended that in being required to reveal various elements of his defense, his right to remain silent had been violated. As the Court pointed out in remarks apposite to the instant case:

> "The defendant in a criminal trial is frequently forced to testify himself or to call other witnesses in an effort to reduce the risk of conviction. When he presents his witnesses he must reveal their identity and submit them to cross examination which in itself may prove incriminating or may furnish the State with leads to incriminating rebuttal evidence. That the defendant faces a dilemma demanding a choice between complete silence and presenting a defense has never been thought of as an invasion of the privilege against compelled self-incrimination.
>
> ". . . Response to that kind of pressure [i.e., the need to make choices in developing a trial strategy] by offering evidence or testimony is not compelled self-incrimination transgressing the Fifth and Fourteenth Amendments.
>
> ". . . Nothing in the Fifth Amendment privilege entitles a defendant as a matter of constitutional right to await the end of the State's case before announcing the nature of his defense, anymore than it entitles him to await the jury's verdict on the State's case-in-chief before deciding whether or not to take the stand himself." 399 U. S. at ——, 26 L. Ed. 2d at 451-452.

Thus, the *Williams* decision must be controlling here. Irrespective of the procedural posture of the case or the

label petitioner uses to describe the type of the defense he seeks to secrete, the substance and significance of the requested information which defendant contended in *Williams* would constitute compelled self-incrimination is identical to the gravamen of petitioner's objection to the reciprocal discovery order: submission to the State of the identity of the witnesses he intends to call in his defense and the opportunity to depose them.

The distinction between *Williams* and the instant case on the ground that *Williams* dealt with an affirmative defense or alibi defense is meaningless. While such defenses as alibi, or impotency in rape prosecution are treated procedurally as "affirmative defenses" in modern pleading, they are not common law confessions and avoidances, as a plea of insanity, for example, probably is. As a matter of logic, an alibi can do no more than rebut an inference, developing from the State's case, which would place the defendant at the situs of the crime. By obtaining evidence tending to undermine testimony that defendant was not present, the State seeks to buttress the inference arising from its *prima facie* case that the defendant was present. Cf. 399, U. S. at ——, 26 L. Ed. 2d at 450, 452.

Nor is the susceptibility of alibi situations to surprise a real distinction. As the Court pointed out in *Williams*, the defendant has no constitutional right to "surprise" the State regardless of the nature of his defense; the State can always obtain a continuance at trial on the grounds of surprise as soon as an alibi witness is called, in the absence of the notice-of-alibi rule, and depose the witness. Of course the State can do the same thing, in the absence of a pre-trial discovery rule, in any other case of surprise. See 399 U. S. ——, 26 L. Ed. 2d at 452.

Lastly, *Williams* disposes of the implication in petitioner's concluding statement, that there is anything amiss

insofar as the application of R. 3:13-3 (d) might lead to disclosure on pre-trial of evidence believed at that stage to be exculpatory, which might later prove damaging to his case. As the Court held in *Williams*, there is no constitutional right to be protected from the chance that "the attempted defense ends in catastrophe for the defendant." 399 U. S. at ——, 26 L. Ed. 2d at 451; *State* v. *Angeleri*, 51 N. J. 382, at 384 (1968); *State* v. *Baldwin*, 47 N. J. 379, 388 (1966), *cert. denied*, 385 U. S. 980, 17 L. Ed. 2d 442 (1966).

B. Even were *Williams* not controlling here, New Jersey's form of reciprocal discovery of witnesses intended to be called at trial, if not all forms of reciprocal discovery, is constitutionally unassailable.

Assuming, *arguendo*, *Williams* were not found to be controlling on the issue of pretrial discovery in this case it appears that the only decision the petitioner could marshal to lend any support to his contentions in Point Three is an isolated district court decision, *United States* v. *Fratello*, 44 F. R. D. 444 (S. D. N. Y. 1968) which is not directly on point. The decision in *Brady* v. *Maryland*, 373 U. S. 83, 10 L. Ed. 2d 215 (1963), is inapposite to the purported issues here. *Brady* holds only that the requirements of "due process" impose a *duty on the prosecutor* to disclose evidence material to guilt or punishment. It does not give the defendant a constitutional right to forage through the prosecution evidence in an effort to elicit any evidence that may assist his defense. Just as petitioner has failed to specify what in particular of the evidence in his possession may possibly incriminate him, he has given no indication of, nor is there any reason to believe that the States possesses exculpatory evidence. Hence, at this stage of the proceedings, the State is aware of

absolutely nothing that it would be required to disclose to the petitioner, independent of this requests pursuant to R. 3:13-3 (a), (b) and (c).

Fratello was concerned only with discovery of those business records of defendants they intended to use at trial in an income tax prosecution based in large part upon incriminating evidence contained in documents purloined from defendants' files by their former accountant, who was to be a government witness. The only available copies of these documents were alleged to be in the sole possession of the government. The court acknowledged that *Schmerber* v. *California*, *supra* foreclosed the raising of the privilege question with regard to "oral or physical" evidence. 44 F. R. D. at 450. However, the Court felt even if the personal records, books and papers of the defendant might be evidence of such a character, considerations of fairness, protection of property rights (e.g. *Boyd* v. *United States*, 116 U. S. 616, 6 S. Ct. 524 (1886) and public policy (44 F. R. D. 450-451) dictated that the court, in exercising the discretion it held under Rule 16 (e) deny discovery. As the court itself indicated, *Fratello* should be closely limited to its peculiar facts. It offers no guidance on the question of whether a requirement that a defendant furnish the State with a list of witnesses he intends to call at trial and their statements ever involves compulsion of communicative or testimonial evidence from the defendant.

In the proceedings below, the State placed heavy reliance upon Justice Traynor's decision in *Jones* v. *Superior Court*, 58 Cal. 2d 56, 372 P. 2d 919, 22 Cal. Rptr. 879 (1962), sustaining an order granting a prosecution request for discovery of the witnesses that the defendant in a rape case intended to call in regard in his defense of impotency, and any reports they may have prepared regarding defendant's alleged condition. The State is frank to

admit that in a penetrating decision, *Prudhomme* v. *Superior Court*, 2 Cal. 3d 320, 85 Cal. Rptr. 129, 466 P. 2d 673, the California Supreme Court has substantially limited the force of the *Jones* decision.

However, an examination of the mechanics of the *Prudhomme* decision merely fortifies the conclusion that the constitutional questions arising under the California procedure, which impelled the Califronia court in *Prudhomme* to burden pre-trial discovery by the State with certain restraints, would be moot in the context of New Jersey discovery procedure. The New Jersey rule, on it's face, is not susceptible to the objections raised in *Prudhomme*.

At the matrix of the court's decision in *Prudhomme* was the axiom that in determining the scope of pre-trial discovery by the prosecution—

> ". . . [the] defendant must be given the same right as an ordinary witness to show that disclosure of *particular* information could incriminate her." 2 Cal. 3d at 326. (Emphasis supplied.)

The court found that the trial court's order compelling the disclosure to the prosecution of the names, addresses and *expected testimony* of the witnesses defendant intended to call was defective in its failure to afford defendant this right, or even inquire into the incriminatory nature of the *particular* information sought. However, the Court took pains to point out that:

> "We do not intend to suggest that the prosecution should be barred from *any* discovery in this or any other case. A reasonable demand for factual information which, as in *Jones*, pertains to a particular defense or defenses, and seeks only that information which defendant intends to introduce at trial,

> may present no substantial hazards of self-incrimination and therefore justify the trial judge in determining that under the facts and circumstances in the case before him, it clearly appears that disclosure cannot possibly tend to incriminate." 2 Cal. 3d at 327. (Emphasis supplied by the Court.)

The thrust of *Prudhomme* is that procedures for pre-trial identity and statements of witnesses must submit to the effective exercise of the defendant's right to demonstrate that the disclosure of particular, i.e., specific information could tend to incriminate him. New Jersey's pre-trial discovery procedure, unlike California's, explicitly provides for this exercise by incorporation of the protective order mechanism:

> "Upon motion and for good cause shown the court may at *any time* order that the discovery or inspection sought pursuant to R. 3:13-3 (b) (c) or (d) be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the Court may consider the following: . . . *protection of confidential* relationships and privileges recognized by law: . . ." R. 3:13-3 (g) (1) (Emphasis supplied.)

If at any time in the course of the present proceedings, it should appear that petitioner's constitutional right against self-incrimination was being violated as a result of particular information obtained by the State on discovery, the trial court would presumably bar such evidence from being presented at trial, pursuant to this provision. However, in the instant case, petitioner has yet to seek such a protective order, indicate the particular information he deems incriminatory, or in any other way attempt to demonstrate how *he* will be prejudiced in this

matter by complying with the order. When he presents actual, rather than speculative grounds for such an objection, his motion will be cognizable. Parenthetically we note that the lack of finality of the order from which petitioner seeks review is underscored by the provision in R. 3:13-3 (g) (1) allowing prophylactic relief to be granted at *any time* in the proceeding, upon the requisite showing being made.

The New Jersey pre-trial discovery procedure incorporates an adequate remedy to protect petitioner's constitutional right against self-incrimination and must be judged constitutional on its face.

POINT II

The basis upon which the warrant to search was issued met pertinent constitutional standards for probable cause.

Petitioner's attempt to attack the sufficiency of the basis upon which Judge Kingfield found probable cause to exist is mis-directed. To the extent that constitutional standards regarding the sufficiency of the basis for the warrant are pertinent, the Court's decision in *United States* v. *Ventresca*, 380 U. S. 102, 13 L. Ed. 2d 684 (1965), is dispositive of any questions which may be raised with regard to sufficiency of the affidavit as a basis for the warrant and is controlling here. Moreover, to the extent that the Court's decision in *Spinelli* v. *United States*, 393 U. S. 410, 21 L. Ed. 2d 637 (1968), is germaine to the instant case, the application for warrant was clearly adequate.

The affidavit in this case is *not even susceptible* to any of the objections against which the sufficiency of the

affidavit in *Ventresca* was upheld. As the Court reiterated in *Ventresca*, ". . . [an] affidavit based on hearsay will be sufficient, so long as there [is] substantial basis for crediting the hearsay . . ." 380 U. S. at 108. In the instant case, unlike *Ventresca*, the information recited in the affidavit did not come merely from unidentified investigators; rather it was precisely identified as the personal observation of the affiant and two of his fellow State Police officers who were named and identified as detectives. Moreover, the affiant and his colleagues interchanged assignments during the course of the surveillance. Consequently, the affiant, an experienced police investigator who had conducted numerous lottery investigations, was able to confirm by personal observation, the same array of activities involved in the *modus operandi* of the lottery operation, that was observed by his colleagues on other occasions. The affiant had personal knowledge of all the activities he cited as indicia of what, from his and Judge Kingfield's long experience, appeared to be a typical lottery operation (Pa6, 12, 14, 16). The affiant's recital far exceeded that which was constitutionally required in this regard inasmuch as:

> "Observations of fellow officers of the government engaged in a common investigation are plainly reliable basis for a warrant applied for by one of their number." 380 U. S. at 111.

Petitioner's invocation of the informer question is totally inapposite. The injunctions in *Aguilar* v. *Texas*, 378 U. S. 108, 12 L. Ed. 2d 723 (1964) and *Spinelli* v. *United States*, *supra*, regarding the use of informer information has no bearing whatsoever on the sufficiency of the affidavit in the instant case. Such warrant adumbrated personal observations of experienced police investigators obtained during a complete independent in-

vestigation which encompassed and ascertained far more than the substance of the original and later "tips". Any information in the affidavit identified as originating from the confidential informant was independently confirmed and amplified by the personal observations of the officers. The "tips" supplied by the confidential informant were nothing more than the moving force for the initiation for the investigation. Observations made in the course of the investigation provided the impetus for continuing it. The results of the investigation, including the inferences set forth therein, wholly independent of any "tips", would have sufficed as the basis for the warrant application. *United States* v. *Ventresca, supra.*

In *Spinelli*, the Court found as the fatal defect in the warrant application, that an item detailing the informer's tip had a "fundamental place" in the warrant application. Indeed it was the linch-pin of the affidavit without which probable cause could not be garnered from the array of equivocal, or seemingly innocous information gathered during the FBI investigation. 393 U. S. at 414. In the instant case, the informant's tip was mentioned only as background to the commencement of the investigation.

The inferences upon which probable cause was predicated were in the first instance the product of the affiant's own thought process, based upon his experience and training, and were duplicated by an experienced judge of the New Jersey Superior Court. Indeed, the thought processes of the issuing judge may have been even more rigorous than a simple consideration of the activities described. As stated by the trial court:

> "I don't know of any activity which is legal which could be conducted in the manner that the activities which are described in this affidavit could be con-

> ducted, but I suppose that it is entirely possible that people would travel from spot to spot as was indicated here and then after obtaining certain things in paper bags, ride by without stopping and throwing them out the window and have someone come from behind a chain link fence and pick them up and take them inside, but it is certainly a factor which should be considered in arguing the overall affidavit." (Pa15)

Moreover, in every other material respect beyond the critical fact that the informant's information was not essential to the finding of probable cause, the affidavit in the instant case is adequate, where the affidavit in *Spinelli* was subjected to criticism. Thus, while in *Spinelli*, there was nothing in the affidavit beyond the "bald" statements of the FBI agent to support the proposition that the defendant was a "gambler", 393 U. S. at 414, all of the persons identified by name during the course of the surveillance here were checked for previous criminal records through the State Bureau of Investigation. These inquiries disclosed that the subjects identified as Horace L. Shivers, Philip Ventigli and John O. Mapp had arrest records relating to lottery violations and that Charles Clark had been arrested for grand larceny. This documented information *could be probative* in weighing the inferences drawn from the officers' observations. *Nathanson* v. *United States*, 290 U. S. 41, 46, 78 L. Ed. 159, 161 (1933).

In regard to the documentation of the accused's criminal activities and propensities, the Court in *Spinelli* required of informant's tips as a basis for the warrant, only that they be described—

> ". . . in sufficient detail that the magistrate may know he is relying on something more substan-

> tial than a causal rumor circulating in the under world or an accusation based merely on an individual's general reputation." 393 U. S. at 416.

A fortiori, when an experienced issuing judge relied upon information from the State Bureau of Investigation offered by police officers, detailing arrests, the standard was met.

Only the absence of an adequate recital of the underlying facts of the instant case in the petition, in contrast to some other fantasized case that the petitioner would prefer to defend, lends an air of reasonableness to his attempt to present questions to the Court regarding the sufficiency of the warrant. It is respectfully submitted that the Court should not entertain further discussion on the question denominated in the petition as "Point One".

POINT III

The search which elicited the evidence sought to be suppressed was conducted pursuant to, and in conformance with a search warrant describing the place to be searched with sufficient particularity.

New Jersey Court Rule 3:5-7 (d) provides that no search or seizure conducted in good faith under a search warrant —

> "shall be deemed unlawful because of irregularities in the warrant or in the papers or proceeding to obtain it, or in its execution . . ."

There has been no allegation that the search and seizure conducted on July 1, 1969 upon the premises of J. C. Vending Machine, Inc. was conducted in bad faith.

However, the petitioner maintains that the search was improper because it is his contention that the locus of the numberless building unit from which the seized items were taken was actually No. 951 Southard Street. Although this unit was linked by the seized intercom system with the rest of the main part of the premises of J. C. Vending Company, Inc. of 947 Southard Street, Trenton, and was immediately accessible from the rest of the building forming the J. C. Vending complex but not from the separate, unconnected, but contiguous building occupied by the Trans World Wig Company bearing No. 951 on the street side, he contends that it should be considered as forming a part of a separate premises with the building fronting on the street and bearing the No. 951, rather than as part of—

> "the premises of J. C. Vending Inc., 947 Southard Street, City of Trenton, County of Mercer, State of New Jersey, including the buildings comprising J. C. Vending Inc., which are generally surrounded by the chain link fence or which are accessible from within the fenced area of the J. C. Vending Corp. . . ." (Pa18)

The actual facts regarding positional relationships of the various buildings upon the J. C. Vending premises, which petitioner studiously avoids setting forth in the petition, make it evident that in actuality, the warrant was probably more accurate in delimiting the area to be searched, to include the numberless building adjoining No. 951 Southard Street which enjoyed direct entry into the J. C. Vending premises, but not the wig company premises, than a warrant simply authorizing a search of the premises at No. 951 Southard would have been. (*E.g.*, testimony of defendant Costello, R. 94-104.) In stating

that none of the suspicious conduct was observed "in or around No. 951", petitioner is correct only insofar as the affidavit did not allege that any suspicious activity was observed within the front building occupied by the wig company bearing the No. 951 address. Considerable activity was observed in the yard adjoining the back building. Indeed, from the four corners of the affidavit, it is clear that such portions of the fenced in area not used by the J. C. Vending Corp. were to be excluded from the search, irrespective of the numbers they might bear.

As disclosed by the petitioner's own testimony, it is incorrect to refer, as the petitioner does, to both the front unit at No. 951 Southard and the unconnected, contiguous unit fronting on the J. C. Vending yard as a single building unit (R. 125). Thus it is doubtful whether recourse need be made to New Jersey Rule 3:5-7 (d) to uphold the validity of this warrant.

Even assuming *arguendo*, that the locus of the seized items should more properly have been designated as No. 951 Southard Street, there was no error in upholding the search after a full hearing upon defendant's Motion to Suppress. As stated by the Supreme Court of New Jersey in disposing of a closely related question in *State* v. *Daniels*, 46 N. J. 428 (1966):

> "The test is not whether the description is completely accurate in every detail but rather whether it furnishes a sufficient basis for identification of the property so that it is recognizable from other adjoining and neighboring properties. United States v. Pisano, 191 F. Supp. 861 (S. D. N. Y. 1961)." 46 N. J. at 437.

In remarks that furnish guidance in the instant case, the New Jersey Supreme Court there concluded:

> "The *designation of the street number might well here be regarded as superfluous.* See United States v. Contee, F. Supp. 26 (D. C. 1959). An officer could not only have with reasonable effort, identified the premises commanded to be searched, but *would not with this warrant have been justified in searching any other premises in the block* . . . We do not mean to be understood to say generally that the personal knowledge of the officer executing the warrant of the place to be searched, could cure a vitally deficient description, but merely, where as here, the error is at the worst innocent and technical, and *there is additional descriptive language which properly identifies the place, such knowledge is an element to be considered. The building to be searched was identified by far more significant language than the street number.* In the light of the foregoing, the error fades into comparative insignificance." 46 N. J. at 438. (Emphasis supplied)

The controlling test for determining the sufficiency of the description of the premises continues to be whether armed with the description incorporated in the warrant, the officer can, with reasonable effort, ascertain and identify the place intended to be searched. *Steele v. United States*, 267 U. S. 498, 503, 45 S. Ct. 414, 69 L. Ed. 757 (1924). It is respectfully submitted that the warrant in the instant case met this requirement and no viable constitutional question can be raised regarding the execution of the search and seizure.

CONCLUSION

For the foregoing reasons respondent respectfully submits that certiorari should be denied in the matter of the instant petition.

Respectfully submitted,

GEORGE F. KUGLER, JR.,
Attorney General of New Jersey
Attorney for Respondent.

MICHAEL R. PERLE,
Deputy Attorney General,
Of Counsel and on the Brief.

APPENDIX

Affidavit of Andrew Andaloro

APPLICATION FOR SEARCH WARRANT

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.:

On this 30th day of June, 1969, before me the undersigned Judge of the Superior Court, State of New Jersey, personally appeared Investigator Andrew Andaloro of the New Jersey State Police, who being duly sworn on his oath according to law says:

1. I make this affidavit in the performance of my duties as a law enforcement officer of the State of New Jersey. My office is at the New Jersey State Police Hightstown Station, in the Township of East Windsor, County of Mercer, State of New Jersey.

2. I have good reason to believe and do believe that in and upon certain premises within the City of Trenton, County of Mercer, State of New Jersey, known as J. C. Vending Machines Inc. of 947 Southard Street, and more particularly described as a two story yellow brick building bearing a sign on the front "J.C. Vending Machines Inc." also painted on the front wall beneath are the words "Ice Cream, Coffee, Drinks, candy, cigarettes, cigars, music, games, etc.". The front of the first floor has a large glass display type windows, with an entrance door to the right of the windows. The second level on the front has three pair of double mullion windows and a large picture

window. The rear and side area of the building is of concrete or cinder block construction containing numerous overhead garage doors. The area surrounding the main two story building is blacktop coated. The area edging the black top is generally surrounded by a chain-link fence in between the areas not covered by adjacent buildings. This somewhat rectangular area is bordered on the north by Southard Street and on the south by Trent Street. On the Trent Street side is a yellow concrete or cinder block garage type building which fronts three garage type doors onto Trent Street, and at least one garage type door leading into the property. At the left side of the blacktopped area also fronting onto Southard Street, is another two story building of similar yellow brick and yellow concrete or cinder block construction. The front of this building borders the sidewalk area on Southard Street with the windows on the low level boarded over. At the side the chain-link fence connects to the building. Within the fenced in area are two garage doors leading into the blacktopped area of JC Vending Inc., being occupied by one Charles Hunter Clark, approximately 40 years, 6'0", light skinned colored male, moustache, there has been and is now being conducted the illegal practice commonly known as lottery in violation of 2A:121-3 of the laws of the State of New Jersey, also involved in this illegal operation of lottery in violation of 2A:121-3 of the laws of the State of New Jersey is the premise known as 13 Grant Avenue, within the City of Trenton, and more particularly described as a three story red brick building, with stairway leading to the entrance which protrudes onto the sidewalk and face North Clinton Avenue with a green door bearing number 13 and a chrome colored kick plate at the bottom, with a small porch bordered with iron rail and a

white aluminum type awning over this porch, with double mullion window to the right of the entrance way and in particular the apartment to the right of the entrance door occupied by unknown persons; and also involved in this illegal operation of lottery are the following persons: Horace Shivers operator of a 1960 Rambler station wagon N. J. registratoin NXW-692 and owner-operator of a 1959 yellow Cadillac convertible N. J. registration LBJ-707; John Doe described as 6'0", 220 lbs., dark skinned colored male, approx. 55 years of age; Jane Doe described as 5'3", 170 lbs. dark skinned colored female, 50 years of age.

3. The facts tending to establish the grounds for this application and the probable cause of my belief that such grounds exist are as follows:

a. On April 24, 1969 a confidential informant, who has given information that has proved reliable in the past, advised that a lottery operation was being conducted in the City of Trenton in the following manner: Horace L. Shivers, a colored male, who operates a 1960 Rambler station wagon, color black and white and a 1959 Cadillac convertible, color yellow, picks up lottery bets at various places in the City of Trenton including Federated Metals Division of American Smelting and Refining, Enterprise Ave., Trenton and a residence at 13 Grant Ave., Trenton, and delivers these lottery bets to either Philip Ventigli at his home on Princeton Ave., or to J. C. Vending Corp., Southard Avenue, Trenton, New Jersey.

b. A check with the State Bureau of Identification reflected that Hórace Lee Shivers, colored male, age 31, was arrested on April 27, 1965 for possession of slips and engaging as a messenger for a lottery.

Affidavit of Andrew Andaloro

State Bureau of Identificatoin records also reflect that Philip Anthony Ventigli was arrested on March 29, 1954 for possession of Lottery Paraphernalia.

c. On Friday, April 25, 1969, while conducting a surveillance adjacent to the Federated Metals factory, Enterprize Ave., I made the following observations: At approximately 1:50 PM a 1960 Rambler station wagon, color black and white with chrome roof rack bearing New Jersey registration NXW-692, operated by a colored male, stopped at the gate in front of Federated Metals. An unknown colored male described as being approximately 6'0", 220 lbs., approximately 55 years of age, wearing work coveralls and a skull cap came out of the gate and approached the Rambler. I observed this man take an envelope from his right coverall pocket and give the envelope to the colored male sitting in the Rambler. I followed the Rambler as it left Enterprize Ave., to Grant Ave., where the colored male operator parked his Rambler and entered the premise of 13 Grant Ave., hereinbefore described, at approximately 2:10 P.M. This colored male is described as being approximately 6'0", 180 lbs., 30 years of age, wearing goatee and moustache, black hair in high pompadour style, sports clothes. At approximately 2:20 PM the colored male left 13 Grant Avenue and returned to his Rambler. I observed this person carrying a manila colored envelope in his right hand as he proceeded to his vehicle. I followed the Rambler as it left Grant Avenue, to Pennington Avenue where the operator parked his Rambler adjacent to a three story brick apartment house. The colored male left the Rambler and approached a doorway bearing No. 76, knocked on the door, and a colored female, described as approximately 5'3", 170 lbs., 50 years of age, exited the building from this door and I observed this

woman give the colored male a brown paper bag. The colored male returned to the Rambler and proceeded on Pennington Ave., to Calhoun Street and continued onto Princeton Ave. to Stout Avenue and turned left. After turning onto Stout the Rambler proceeded a short distance, and turned left into an alley behind the homes and businesses facing Princeton Ave., (odd numbered buildings), at approximately 2:28 PM. Moments later the Rambler was observed at the intersection of Heath and Princeton Avenues. Heath Ave., being the Avenue running parallel to Stout Avenue. At this time surveillance and tail was discontinued.

Records of the New Jersey Motor Vehicle Bureau reflect that NXW-692 is registered to Walter O. Shivers of 41 Tyrell Ave., Trenton on a 1960 Rambler Station Wagon, color black and white.

Also this date, I proceeded to the State Bureau of Identification and secured a photograph of Horace Shivers and positively identified the occupant of the Rambler as being the same person.

d. On Monday, April 28, 1969, Detective W. Decker of the New Jersey State Police, conducted a surveillance of the Federated Metals factory, Enterprise Ave. and made the following observations: At approximately 1:55 PM the 1960 Rambler operated by Shivers arrived at the gate in front of Federated Metals. An unknown colored male, previously described approached the Rambler from the factory and handed Shivers a white envelope which he took from his right coverall pocket. Shivers then drove off.

On this date, Detective A. DeMasi, also of the New Jersey State Police, conducted a surveillance of 13 Grant Ave-

nue between the hours of 1:40 PM and 2:25 PM. During the period of surveillance Det. DeMasi observed 12 colored males, 2 colored females and 1 white female enter the premise between 1:40 PM and 2:00 PM. These persons entered the premise and exited moments later on each occasion. On each occasion entry was gained by these persons by rapping on the 1st floor window and then waiting at the door until an unknown person opened the door from the inside. One colored male operating a 1964 Pontiac, color black, bearing New Jersey registration LNS-238 existed his vehicle carrying a white envelope in his right hand. This colored male, described as being approx. 55 years of age, 6'0", 220 pounds, approached the porch, rapped on the window, and waited by the door until an unknown colored male opened the door and took the white envelope from the operator of the Pontiac. The operator of the Pontiac then returned to his vehicle and drove off. At approx. 2:15 PM, the colored male identified as Horace Shivers operating the 1960 Rambler arrived and parked adjacent to 13 Grant Ave., and entered the building empty handed, using the same procedure as the aforementioned persons. At approximately 2:20 PM, Shivers exited the building carrying a while envelope in his right hand. As he approached his vehicle he threw the envelope into the opened window by the drivers door onto the front seat of the Rambler.

Records of the New Jersey Motor Vehicle Bureau reflect that LNS-238, 1964 Pontiac, color black, is registered to a John O. Mapp of 353½ Resivour, Trenton, New Jersey. Records of the State Bureau of Identification reflect that John O. Mapp has a record of numerous arrests for possession of lottery slips.

Affidavit of Andrew Andaloro

On this date, I conducted a surveillance of the intersection of Stout Avenue and Princeton Avenue. At approximately 2:30 PM I observed Shivers, operating the Rambler driving north on Princeton Ave. past the intersection of Heath Ave. and he turned left onto Stout Ave. Moments later I observed Shivers and the rambler turn onto Heath Ave. from the alley previously mentioned which intersects Stout and Heath Avenues and runs parallel with Princeton Avenue behind the buildings facing Princeton Avenue. Shivers contained across Princeton on Heath Ave. Moments later a 1968 Buick bearing New Jersey registration HSH-395 with a white male operator, exited the alley onto Heath Ave. and turned South onto Princeton Ave.

Records of the New Jersey Motor Vehicle Bureau reflect HSH-395 is registered to Francis Ventigli, 1415 Princeton Ave., Trenton, New Jersey on a 1968 Buick, color green.

e. On Tuesday, April 29, 1969, Det. Decker continued surveillance of Federated Metals, Enterprize Ave., and Shivers again met the colored male in coveralls who was observed giving Shivers a white envelope, at approx. 2:05 PM.

This date, Det. DeMasi continued surveillance of 13 Grant Avenue between the hours of 1:40 PM and 2:20 PM. During this period 12 colored males, 2 colored females and 1 white female were observed entering the premise in the same manner as described in surveillance of April 28, 1969. Shivers arrived at approximately 2:15 PM, entered the premise empty handed and exited shortly thereafter carrying a white envelope.

Affidavit of Andrew Andaloro

This date, I conducted a surveillance of the alley intersecting Stout and Heath Avenues and running parallel to Princeton Avenue. It is noted that the alley runs directly behind 1415 Princeton Ave., the residence of Philip and Frances Ventigli. At approximately 2:25 PM Shivers in the Rambler entered the alley from Stout Avenue. Shivers stopped his vehicle in the alley adjacent to the Ventigli vehicle parked behind 1415 Princeton Ave. A white male described as 5'11", 200 pounds, 45-50 years of age, grey hair (balding) wearing glasses and sports clothes approached Shivers vehicle from the Ventigli yard and Shivers handed this white male brown paper bag through the opened car window. Shivers drove off, entering Heath Avenue crossing Princeton Avenue. Moments later the white male who had taken the bag from Shivers backed the 1968 Buick previously mentioned into the alley from the yard and drove into Heath Ave., and turned South on Princeton Ave. at approximately 2:29 PM.

f. On Wednesday, April 30, 1969 Det. DeMasi continued surveillance of 13 Grant Ave., Between the hours of 1:40 PM and 2:20 PM. During this period approx. 15 persons entered the premise in the same manner previously described including the operator of the 1964 black Pontiac registered to J. Mapp. Shivers arrived at the premise at approx. 2:15 PM and left at approx. 2:20 PM.

This date, I continued a surveillance of the alley intersecting Stout and Heath Avenues. At approximately 2:30 PM Shivers pulled into the alley stopped adjacent to Ventigli's yard and the aforementioned white male with grey hair approached Shivers Rambler. Shivers gave the white male a brown bag and left the alley. The white male left the alley in the 1968 green Buick and turned south on Princeton Ave., at approx. 2:32 PM.

Affidavit of Andrew Andaloro

This date, Det. Decker conducted a surveillance and tail of Ventigli's vehicle as it turned onto Princeton Ave. The green Buick continued south on Princeton Ave. to Calhoun Street and then turned onto Calhoun street continuing in a southerly direction. The Buick turned left onto Trent Street. As the Buick was moving adjacent to the chain link fence located at the rear of JC Vending Inc. property, Det. Decker observed the white male occupant of the green Buick throw a brown paper bag from the open window of the vehicle onto the side walk along the JC Vending fence. A colored male described as being approx. 6'0", 40 years of age, light skinned black hair, wearing a moustache, a beany skull cap, and grey kahki work uniform exited the JC Vending lot through the fence gate and picked the brown paper bag up from the sidewalk and returned into the gate at approx. 2:37 PM.

g. On Friday, May 2, 1969, Detective DeMasi conducted a surveillance of 76 Pennington Ave., Trenton, N.J. and made the following observations: At approx. 2:15 PM a colored female previously described left 76 Pennington Ave. and sat on an abutment of the porch of this premise, holding a brown paper bag. At approx. 2:20 PM Shivers operating the Rambler approached the premise on Pennington Ave. and parked adjacent to the woman sitting on the porch of 76 Pennington Ave. Shivers left his vehicle and approached the woman who then gave Shivers the brown paper bag. Shivers returned to his vehicle and after entering was observed places an unknown amount of white and manila colored envelopes into the paper bag he had received from the woman, and then Shivers drove off on Pennington Ave. towards Calhoun Street.

This date, I continued surveillance of the alley intersecting Stout and Heath Avenues. At approximately 2:29

PM Shivers pulled into the alley, stopped adjacent to Ventigli's yard and the aforementioned white male with grey hair approached Shivers' Rambler. Shivers again gave this person a brown bag and left the alley. The white male left the alley shortly thereafter and turned south on Princeton Ave. from Heath Ave. at approx. 2:31 PM.

Det. Decker conducted a surveillance of Trent Street adjacent to the J C Vending Corp. rear gate and made the following observations: At approx. 2:36 PM the 1968 green Buick with a while male operator entered Trent Street from Princeton Ave. and as the Buick was moving adjacent to the chain link fence of J C Vending the white male occupant threw a brown paper bag from the open window of his vehicle onto the side walk along the fence. The colored male previously described wearing grey kakhi uniform exited the fence through the gate and picked the bag up off the sidewalk and walked to the yellow garage attached to the fence located on the extreme east end of the JC Vending fenced property facing Trent Street. The colored male entered the garage through the last garage door at the east wall of this building.

h. On Monday, May 5 and Wednesday May 7, 1969 I conducted surveillance of the alley located behind the Ventigli residence. On each occasion, Shivers gave a brown paper bag to the white male previously described between 2:25 PM and 2:30 P.M. The white male then left the alley on each day in the green Buick driving south on Princeton Ave.

On both of the above mentioned days Det. Decker conducted surveillances of Trent Street adjacent to the J C Vending Corp. rear gate, and between the hours of 2:30 PM and 2:35 PM observed the white male occupant throw

a brown paper bag onto the walk bordering the J C Vending property and the colored male in grey kahki pick the bag up and carry the bag into the garage aforementioned.

i. On Thursday, May 8, 1969, I continued surveillance of the alley intersecting Stout and Heath Avenues behind Princeton Ave. On this date Shivers and the white male were not observed.

On this date, Det. Decker made the following observation while conducting a surveillance of Trent Street adjacent to J C Vending gate and fence: At approximately 2:30 PM Shivers operating the Rambler station wagon turned into Trent St. from Princeton Ave. and threw a brown paper bag onto the sidewalk which was retrieved by the colored male wearing grey kahki clothes who carried the bag into the end garage door as previously described.

j. On Tuesday, May 13, 1969 I conducted a surveillance of J C Vending from Trent Street. At approximately 2:27 PM Shivers, operating a yellow cadillac convertible bearing New Jersey registration LBJ-707 turned into Trent St. from Princeton Ave. and threw a brown paper bag onto the sidewalk which was retrieved by the colored male, who carried the bag into the garage through the last door adjacent to the east wall of the building.

Records of the New Jersey Motor Vehicle Bureau reflect that LBJ-707 is registered to Horace L. Shivers of 41 Tyrell Ave., Trenton, N. J. on a 1959 Cadillac convertible.

k. On May 14, 1969 a confidential informant, who has given information that has proved reliable in the past, ad-

vised me that J C Vending is the drop for numbers bets in the Trenton area, and J C Vending drivers and the corporations commercial vehicles are utilized as pickup men in and around the Trenton area. The drivers pick up numbers bets and return to the J C Vending Corp. between 2:00 PM and 3:00 PM daily with the bets.

This date, Det. DeMasi and I conducted a surveillance of the J C Vending Corps main entrance, yard, and secondary buildings located on Southard Street. Between the hours of 2:00 PM and 2:30 PM 3 green delivery vans bearing J C advertising entered the yard. The vehicles parked against the fence at the west side of the property and the drivers carried bags into the secondary entrance of the main building. At approx. 2:25 PM the colored male previously described exited the main building from the secondary exit and he proceeded to the rear of the property to the fence bordering Trent St. This colored male stood by the fence bordering Trent until a yellow cadillac convertible passed the gate and the operater threw something from the vehicle. He then left the property and picked up the object thrown from the vehicle and walked to the garage he had entered on previous days of surveillance. A short time later this colored male was observed approaching the main building through the yard carrying a brown paper bag folded tightly in his right hand and he entered the main building through the secondary entrance. At approximately 2:45 PM a blue sedan and two green delivery vans bearing J C advertising entered the yard and all three drivers exited their vehicles carrying paper bags and packages brown in color and entered the secondary entrance of the main building. At approx. 2:55 PM the colored male in grey kahki left the building carrying a large brown bag and entered the garage section

to the rear and adjacent to the main building. At approximately 2:58 PM a 1964 Buick, color grey and black bearing N. J. registration LAD-572 entered the yard. A white male exited the vehicle and was recognized by me to be the same person observed on earlier dates who had met Shivers at 1415 Princeton Ave. in the rear alley and who had thrown the bag against the fence at J C Vending on various earlier dates. This person had a small brown bag in his right hand folded tightly. As he approached the main building the colored male in grey kahki left the garage section and met the white male. The white male and colored male walked together into the main building. Moments later the white male left the main building and drove off in his vehicle. At approximately 3:15 PM the colored male left the main building carrying a small brown bag in his hand, and he entered the garage section to the rear and adjacent to the main building. At 3:22 PM the colored male left the garage carrying a large brown bag in his right arm and several small bags in his left hand. This person walked around the main building and entered the large two story building (with boarded windows on first level) east of the main building through one of two garage doors accessible from the yard.

Records of the New Jersey Motor Vehicle Bureau reflect that LAD-572 is registered to Frances Ventigli of 1415 Princeton Ave., Trenton, N. J.

1. On May 15, 16, 1969 I conducted surveillance of J C Vending Corp. rear fence from Trent Street. On each occasion between 2:25 PM and 2:30 PM I observed Shivers throw the bag from his yellow cadillac and each time the brown bag was retrieved by the colored male previously described who carried the bag into the garage in the same manner mentioned previously.

Affidavit of Andrew Andaloro

On May 16, 1969 I continued the surveillance until 4:40 PM when the colored male was observed leaving the J C Vending property through the rear gate and locking the gate as he left. This person entered a grey 1963 Cadillac bearing New Jersey registration MIL 582 and drove off.

Records of the New Jersey Motor Vehicle Bureau reflect MIL 582 is registered to Charles Hunter Clark of 323 Walnut St., Trenton, N. J., on a 1963 blue cadillac 2 door sedan. The records reflect Clark's employment as J C Vending Corp., 947 Southard St., Trenton, N. J.

Regords of the State Bureau of Identification reflect that Charles Clark had previously been arrested for Grand Larceny.

m. On June 24, 25, 26, 27, 1969 surveillances by Det. Decker, Det. DeMasi and I indicated the following:

On each of the above mentioned dates Det. Decker conducted surveillance of the Federated Metals factory, Enterprize Ave., Trenton, N. J. On each day, Shivers operating the 1959 yellow cadillac bearing N. J. registration LBJ 707 arrived at the factory gate between 1:55 PM and 2:10 PM and the unknown colored male, wearing coveralls (previously described) approached Shivers and handed Shivers an envelope.

On June 24, 25, 27, 1969 Det. DeMasi conducted surveillances at 13 Grant Avenue, Trenton, N. J. and observed numerous persons entering the premises in the manner previously described. Each day between 2:05 PM and 2:20 PM Shivers entered this premise in the same manner, and left carrying papers or envelopes.

On June 26, 1969 Det. DeMasi conducted a surveillance of 76 Pennington Ave., Trenton, N. J. and the colored

female previously described sat on her porch until 2:25 PM when Shivers arrived operating the 1959 yellow cadillac, Shivers left his vehicle and approached the woman who gave him a brown paper bag. Shivers returned to his vehicle and drove off towards Calhoun Street.

On each of the aforementioned dates, I conducted surveillances of Trent Street adjacent to the J C Vending Corp. rear gate and between the hours of 2:25 PM and 2:30 PM I observed Shivers in the yellow cadillac throw a brown paper bag from his vehicle towards the J C Vending gate. On each occasion the colored male wearing grey kahki (previously described) retreived the bag and carried the bag into the J C Vending property.

I have been a police officer for five years and during this time I have conducted numerous gambling investigations of this type. In my previous experience as a police officer, I have observed lottery operations of this type to be generally conducted in a similar manner. Bets received by the writers are recorded on slips of paper which are retained by the writer until they are turned over to a collection man usually called a runner who after gathering slips from the writers transports all of the slips to the drop or bank. Paper bags, and envelopes are common containers used in the transaction of these slips. The hours of surveillance of the aforementioned persons transporting and delivering paper bags and envelopes are indicative of the unusual hours of delivery of the slips to the bank or drop.

4. Wherefore, I respectfully move that a search warrant be issued authorizing a search of: The premises of J C Vending Corp., 947 Southard Street, City of Trenton, County of Mercer, State of New Jersey, to include the

buildings comprising J C Vending Corp. which are generally surrounded by the chain link fence or which are accessible from within the fenced areas as hereinbefore described and the vehicles registered to the J C Vending Corp. which may be found on the premises of the J C Vending Corp., 947 Southard St., Trenton, N. J.; the person of Charles Hunter Clark hereinbefore described on the public street of Trenton in the premises of J C Vending Corp.; the first floor apartment to the right of the entrance of 13 Grant Avenue, City of Trenton, County of Mercer, State of New Jersey; the person of Horace Shivers hereinbefore described and the 1960 Rambler color black and white N. J. registration NZW-692 and the 1959 Cadillac convertible color yellow N. J. registration LBJ-707 or any other vehicle Shivers may be operating on the public streets of Enterprize Ave., Grant Ave., Pennington Ave., Calhoun St., Princeton Ave., or Trent St., all in the City of Trenton, County of Mercer, State of New Jersey; the person of John Doe, described as colored male, 6'0", 220 lbs., approx. 55 years of age, wearing coveralls and skull cap on the public street of Enterprize Ave., City of Trenton, County of Mercer, State of New Jersey; the person of Jane Doe hereinbefore described as a colored female, 5'3", 170 lbs., approx. 50 years of age, on the public street of Pennington Ave., or the porch of 76 Pennington Ave., City of Trenton, County of Mercer, State of New Jersey, all in the manner according to and provided by law.

Sworn and subscribed to
before me this 30th day
of June, 1969.

A. M. Andaloro
New Jersey State Police

Frank J. Kingfield
Judge of the Superior Court

Search Warrant

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } SS.:

To the Sheriff of the County of Mercer or to any County Detective of the County of Mercer or to any Police Officer or any State Police Officer of the State of New Jersey.

WHEREAS, Inv. A. M. Andaloro of the New Jersey State Police has this day made information on oath before me, Frank J. Kingfield a Judge of the Superior Court, State of New Jersey, that, the illegal practice commonly known as lottery in violation of 2A:121-3 of the laws of the State of New Jersey is being carried on on the public streets of Enterprize Ave., Grant Ave., Pennington Ave., Calhoun St., Princeton Ave., and Trent Street, all in the City of Trenton, County of Mercer, State of New Jersey, by a colored male known as Horace Shivers described as 6'0" 180 lbs., 30 years of age, wearing goatee and moustache, black hair in high pompadour style and operating a 1960 Rambler station wagon color black and white, N. J. registration NZW-692 and a 1959 Cadillac convertible color yellow, N. J. registration LBJ-707.

AND THE COURT being satisfied that grounds for granting the application for a search warrant exist.

NOW THEREFORE YOU ARE COMMANDED in the name of State of New Jersey, with the necessary and proper assistance to search the person of Horace Shivers hereinbefore described and the 1960 Rambler NXW1692, the 1959 Cadillac convertible LBJ-707 or any vehicle he may be found operating on the public streets of Enterprize Ave., Grant Ave., Pennington Ave., Calhoun St., Princeton Ave., or Trent St., all in the City of Trenton, County

of Mercer, State of New Jersey. This search to be conducted between the hours of 10:00 AM and 4:00 PM and if you there shall find that the illegal practice of lottery is being conducted, take into your possession all property including monies, lottery slips, tapes, pads, pens, pencils, and other paraphernalia used as a means of carrying on the illegal practice known as lottery which may be found to the end that the same may be dealt with according to law.

You Are Further Commanded, in the event you seize any of the above described articles to give a copy of this warrant together with a receipt for the property so seized to the person from whom it is taken or in whose possession it is found, or in the absence of such person to leave a copy of this warrant together with such receipt in the place where said property is found.

You Are Further Commanded to execute this warrant within ten (10) days from the issuance hereof and forthwith make return thereof to me with your report of the execution of this warrant and a written inventory of the property seized hereunder by you.

Given and issued under my hand this 30th day of June 1969.

Signed Frank J. Kingfield
Frank J. Kingfield
Judge of the Superior Court